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Practitioner's Docket No. 100302.0016US1

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: John W. Addink, Tony Givargis

Application No.: 10/031,046

Group No.: 2125

Filed: 01/11/2002

Examiner: Paul L. Rodriguez

For: Interactive Irrigation System

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(PATENT APPLICATION--37 C.F.R. § 1.192)

1. Transmitted herewith, in triplicate, is the APPEAL BRIEF in this application, with respect to the Notice of Appeal filed on January 10, 2005.

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Pursuant to 37 C.F.R. § 1.17(c), the fee for filing the Appeal Brief is:

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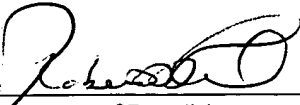
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

EXAMINER: Paul L. Rodriguez
APPELLANT: John Addink, et al.
SERIAL NO. 10/031,046
FILED: January 11, 2002
FOR: Interactive Irrigation System
ART UNIT 2125

MS Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
Attention: Board of Patent Appeals and Interferences

APPELLANT'S BRIEF UNDER 37 CFR § 1.192

This brief, transmitted in triplicate, is submitted along with the appellant's Notice of Appeal in this case. Please charge \$170.00 to cover the cost of filing the opening brief for a small entity as required by 37 CFR § 1.17(c) to our deposit account number 502191. Please also charge any additional fees or credit any overpayment to our deposit account.

This brief contains the following items under the headings in the order here indicated:

- I. Real Party In Interest
- II. Related Appeals And Interferences
- III. Status Of Claims
- IV. Status Of Amendments
- V. Summary Of Invention
- VI. Issues
- VII. Grouping Of Claims
- VIII. Argument
- IX. Appendix

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I. Real Party In Interest

The real party in interest is the Applicant, John Addink.

II. Related Appeals And Interferences

There are no other appeals or interferences in this matter known to appellant.

III. Status Of Claims

There are 25 claims in this case. The claims on appeal are 27 and 28.

IV. Status Of Amendments

In the response to the final Office Action dated September 10, 2004, the applicant submitted claim amendments. Based on the Advisory Action dated 12/07/04, however, those claim amendments were not entered. Therefore, the applicant is appealing the claims as they existed before the amendments. The applicant reserves the right to rewrite claims 27 and 28 into independent form by combining their elements with the elements of claims 1 and 10, respectively.

V. Summary Of Invention

The invention is generally directed to systems and methods in which an irrigation controller and a water application device are physically located at a location of a user. At least one of a start time, a run time, water flow data, and water pressure data are exchanged between the irrigation controller and a government agency using a communication system comprising a public packet switched network. The information provided to the government agency can be used for billing purposes or to remotely control usage at a user's site, for example.

VI. Issues

1. Whether Peek et al. (U.S. Patent No. 6,343,255) can be properly combined with Collins (U.S. Patent No. 6,402,048).

2. Whether Peek teaches or suggests: a communication system that exchanges at least one of a start time, a run time, water flow data, and water pressure data between the irrigation controller and a government agency.

VII. Grouping Of Claims

Claim 27 stands or falls alone and claim 28 stands or falls alone.

VIII. Argument

Background

The Applicant filed application serial no. 10/031046 for Interactive Irrigation System on January 10, 2002 claiming priority to PCT serial number PCT/US00/22673 filed August 17, 2000.

In the Office Action dated September 10, 2004, the Examiner rejected claims 27 and 28 as being obvious over Collins in view of Peek. In the response to the Office Action, the Applicant pointed out that:

- i) The references do not suggest the desirability of combining them to come up with the elements of claims 27 and 28 (page 7, third paragraph); and
- ii) Peek may recite certain words in its description that are also found in claims 27 and 28, but the mere recitation of certain words does not equate to a finding of obviousness. The inquiry is whether the prior art made obvious the invention as a whole (page 6, sixth paragraph – page 7, first paragraph).

On January 6, 2005, the Applicant's representative and the Examiner discussed the Applicant's points, but the Examiner maintained his rejection.

Issue No. 1

Claims 27 and 28 were rejected under 35 U.S.C. § 103 as being obvious over Collins in view of Peek. The applicant maintains that combining the references is improper because the references do not suggest the desirability of making such a combination. "[T]he question is not

simply whether the prior art 'teaches' the particular element of the invention, but whether it would 'suggest the desirability', and thus the obviousness, of making the combination." *Alco Standard Corp. v. Tennessee Valley Authority*, 808 F.2d 1490, 1498, 1 USPQ2d 1337, 1343 (Fed. Cir. 1986). In the Office Action dated September 10, 2004, the Examiner apparently attempted to state the suggestion to combine as follows:

"[I]t would have been obvious...to utilize the communications of Peek in the irrigation controller of Collins because Peek teaches an irrigation system that can" receive information "that will assist the user with proper application of irrigation to crops, which would increase crop production and minimize crop losses" (page 7, second paragraph).

The Applicant fails to see how this statement provides the desirability to combine. All the Examiner is saying is that it would have been obvious to combine the references because Peek teaches receipt of information that can assist the user in applying irrigation. Just because Peek teaches receipt of helpful information, does not make it obvious to use communications of Peek in the controller of Collins. Collins teaches that the controller receives ETo data from a state agency. Nothing in Peek suggests anything more than that. In particular, nothing in Peek suggests that a completely different type of information can be received from a state agency. It should be appreciated that ETo information and flow control information are mutually exclusive. Yes, Peek teaches a portion of the element (water flow data) and yes, Collins teaches another portion of the element (receiving data from a government agency), but there is no suggestion to combine these portions in a way that would make the claimed element obvious.

Issue No. 2

Not only can the references not be properly combined, but even if they could, the combination still does not teach or suggest a communication system that exchanges at least one of a start time, a run time, water flow data, and water pressure data between the irrigation controller and a government agency. Again, Peek may recite certain words in the claim element at issue and Collins may recite certain other words, but the two still do not make obvious the invention as a whole. "[T]he inquiry is not whether each element existed in the prior art, but

whether the prior art made obvious the invention as a whole for which patentability is claimed.” *Hartness International, Inc. v. Simplimatic Engineering Co.*, 819 F.2d 1100, 1108, 2 USPQ2d 1826, 1832 (Fed. Cir. 1987). A missing element is not taught or suggested merely because words or portions of the missing element are recited in the prior art, the missing element and indeed the entire invention as a whole must be made obvious.

If you dissect a claim down far enough you will almost always be able to find all of the elements in some analogous art, but that is irrelevant to a finding of obviousness. “That all elements of an invention may have been old is not unusual, and indeed, irrelevant. Virtually all inventions are combinations and virtually all are combinations of old elements.” *American Medical Systems Inc. v. Medical Engineering Corp.*, 6 F.3d 1523, 28 USPQ2d 1321 (Fed. Cir. 1993).

In rejecting these claims, the Examiner directed the Applicant to column 5, lines 41-53 of Peek to find the elements of claims 27 and 28. In that area of Peek, the specification describes how sensors are used to supply a weather station with data. Among the sensors that Peek describes are a “series of flow meters”. Peek, therefore, may be said to teach collection of water flow data by a weather station. It should be emphasized that the weather station is not a government agency but only “weather stations installed on a single farm” (column 5, lines 54 and 55).

The Examiner uses Collins to find the government agency, but the context within which the government agency is described involves receipt of evapotranspiration rates (ETo) (from a state agency). Collins discusses the need to receive ETo data so that the controller can be properly programmed (column 20, lines 33-40). Thus, Collins may be said to teach receipt of ETo information from a state agency.

The Examiner then attempts to combine these two references to find the missing element. The combination, however, still does not teach or suggest the missing element because flow data cannot be substituted for ETo. There would be no reason for a user to receive flow data from a state agency and therefore this substitution would not be obvious. Any useful flow data would already be known to the user because presumably such flow information would be collected

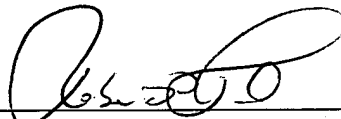
locally. It would not be obvious for a user to collect flow information then send that information to a state agency and then turn around and receive the same information from the state agency. In both Peek and Collins, information is coming into the irrigation controller in order to make the controller more efficient, but this has nothing to do with the element at issue – information being exchanged between a controller and a government agency so that the agency can use the information (e.g. to bill the customer or control water usage of the customer). Thus, even if the references are combined, the claimed element is not made obvious.

Conclusion Of Argument

The Applicant has shown that the references do not suggest the desirability of being combined and that the missing claim element is not disclosed - even by the combined references.

Thus, the claims 27 and 28, if rewritten in independent form, should be deemed allowable. In addition, claims depending off of those claims would also be in condition for allowance. The applicant respectfully requests that the claim rejections be withdrawn.

Respectfully submitted,



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Dated: February 16, 2005

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IX. APPENDIX

What is claimed is:

1. (Previously presented) An irrigation system comprising:
each of an irrigation controller and a water application device physically situated at a location of a user, the controller at least partially controlling the water application device; and
a communication system that exchanges monitoring information between the irrigation controller and a government agency wherein the communication system comprises a public packet switched network.
2. (Previously presented) The irrigation system of claim 1, wherein the exchange of monitoring information with the government agency is bi-directional.
3. (Previously presented) The irrigation system of claim 1, further comprising a microprocessor disposed in the irrigation controller, that facilitates the exchange of monitoring information between the irrigation controller and the government agency.
4. (Previously presented) The irrigation system of claim 1, further comprising a microprocessor disposed in a unit separate from the irrigation controller, that facilitates the exchange of monitoring information between the irrigation controller and the government agency.
5. (Original) The irrigation system of claim 1, further comprising a storage device that stores data at the user location.
6. (Cancelled)
7. (Previously presented) The irrigation system of claim 1 wherein the communication system comprises a two-way pager.
8. (Previously presented) The irrigation system of claim 1 wherein the communication system comprises a web page interface.

9. (Cancelled)
10. (Previously presented) A method of operating an irrigation system comprising:
physically situating each of an irrigation controller and a water application device at a
location of a user;
utilizing the controller to at least partially control the water application device;
providing a first communication system comprising a public packet switched network;
coupling the irrigation controller and a government agency using the first communication
system; and
exchanging monitoring information between the irrigation controller and the government
agency.
11. (Previously presented) The method of claim 10, further comprising a step of the user
entering landscape irrigation operating information into a personal computer, and the
personal computer transmitting the landscape irrigation information to the irrigation
controller via a second communication system.
12. (Previously presented) The method of claim 10, further comprising:
providing the controller with a microprocessor programmed to receive additional
information from a distal computer via a second communication system; and
the microprocessor determining an irrigation schedule based at least in part on landscape
irrigation operating information from the user, and the additional information
from the distal computer.
13. (Original) The method of claim 12, further comprising:
providing the controller with local water usage data; and
the microprocessor determining an irrigation schedule based at least in part on the water
usage data.
14. (Original) The method of claim 13 wherein the step of determining an irrigation schedule
further includes the microprocessor computing a desired quantity of water to be applied to
a landscape at the user's location for a specific period of time.

15. (Original) The method of claim 14 wherein the period of time is at least one day.
16. (Previously presented) The method of claim 12 wherein the additional information from the distal computer includes weather data, and further comprising the microprocessor computing an ETo value.
17. (Previously presented) The method of claim 16 further comprising the microprocessor comparing the ETo value to a desired quantity of water applied to the landscape.
18. (Previously presented) The method of claim 12, wherein the water usage data includes water pressure data.
19. (Previously presented) The method of claim 10, further comprising coupling the user and a distal computer using a third communication system.
20. (Cancelled)
21. (Previously presented) The method of claim 10 further comprising a microprocessor sending a warning to the user via a second communication system when an aspect of the irrigation system falls outside of a predetermined parameter.
22. (Previously presented) The method of claim 10 further comprising a microprocessor preventing an operation of the irrigation system when the irrigation system falls outside of a predetermined parameter.
23. (Previously presented) The method of claim 10, further comprising a step of transmitting information to a distal computer such information comprising a calculated estimate of water actually applied at a station for a time period.
24. (Original) The method of claim 23 wherein the information transmitted to the distal computer further includes a relationship between the calculated estimate of water actually applied at a station for a time period, and a computed ETo for the station for the time period.

25. (Previously presented) The method of claim 10, further comprising sending information from a distal computer to the government agency, such information including irrigation operating information.
26. (Previously presented) The method of claim 25, wherein the irrigation operating information includes at least one of an irrigation start time, an irrigation run time, an irrigation water flow value, and an irrigation water pressure value.
27. (Previously presented) The irrigation system of claim 1, wherein the monitoring information includes at least one of a start time, a run time, water flow data, and water pressure data.
28. (Previously presented) The irrigation system of claim 10, wherein the monitoring information includes at least one of a start time, a run time, water flow data, and water pressure data.